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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR   | ATTORNEY DOCKET NO.        | CONFIRMATION NO.       |
|--|-------------|------------------------|----------------------------|------------------------|
| 10/715,104   | 11/17/2003  | Konstantin L. Valtchev | 2-1861-027                 | 3273                   |
| 803  | 7590        | 07/09/2007             |                            |                        |
| STURM & FIX LLP<br>206 SIXTH AVENUE<br>SUITE 1213<br>DES MOINES, IA 50309-4076 |             |                        | EXAMINER<br>PATEL, TARLA R |                        |
|  |             |                        | ART UNIT<br>3772           | PAPER NUMBER           |
|  |             |                        | MAIL DATE<br>07/09/2007    | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/715,104

Applicant(s)

VALTCHEV, KONSTANTIN L.

Examiner

Tarla R. Patel

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 and 15-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-14, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/17/03, 6/1/04 and 6/28/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group II, Species A- figures 2a-2d and 3a-3b in the reply filed on 5/16/07 is acknowledged.

Confirmation was made by Michael Sturm on 6/22/07.

2. Claims 1-10, 15-18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group and Species, there being no allowable generic or linking claim. Claims 15 and 16 recites the limitation of Non-elected Species D, therefore claims 15 and 16 are withdrawn from further consideration.

### **Information Disclosure Statement**

3. The information disclosure statement (IDS) submitted on 11/17/03, 6/1/04 and 6/28/05. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 11,12,19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Lipfert et al. (3,952,737).

Lipfert et al. discloses an apparatus for vaginal delineation and occlusion, comprises a solid ring (156), a plurality of legs (two legs extending from below 152) to which the ring is operably, pivotally mounted (since it is manually operated by means of operating legs by 154) and a base (152) for securing apparatus to the uterine mobilizer, the legs being operably affixed to the base (see fig 6).

With respect to claim 12, Lipfert et al. inherently discloses the length of legs being variable to permit the solid ring to tilt to accommodate various angle of a fornix (it is inherently variable by means of squeezing and opening the legs 154 together).

With respect to claims 19 and 20, Lipfert et al. discloses an elastic diaphragm (58) made of silicone (column 3 lines 41-44) having passageway/ hole (48) for engaging a base of the device (see fig 2,3), first annulus surrounding hole, a membrane of annulus shape (see fig 1) bordering an outer circumference of the first annulus, a membrane being of

thinner material (column 3 lines 41-44) and an outer periphery being of thicker material than the membrane.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipfert et al. in view of (2,818,856).

Lipfert et al. substantially discloses the invention, see rejection to claim 11 above, further discloses a distal arm, securely, operably affixed to the base (see fig 6); however, Lipfert et al. does not disclose the variable-length legs an outer telescoping arm, pivotally affixed to the solid ring and an inner telescoping arm connecting the distal arm and the outer telescoping arm, the inner telescoping arm sliding into the outer telescoping arm, a spring tending to force the distal arm and the outer telescoping arm apart.

However, Kohl teaches a cervical caps and applicator therefor having a variable-length legs (see figs 3 and 5) an outer telescoping arm, (column 5 lines 55-60) pivotally affixed to the solid ring and an inner telescoping arm

(30c) connecting the distal arm and the outer telescoping arm (30b), a spring (34) to force the distal arm and the outer telescoping arm apart. At the time of invention was made, it would have been obvious to one having ordinary skill in art to use this teaching of variable-length legs and an outer telescoping arm pivotally affixed to the solid ring and inner telescoping arm and outer telescoping to the device of Lipfert et al., as taught by Kohl to have more length variability to the device for insertion of diaphragm to user's vagina.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mohajer (4,821,741) discloses a barrier elastic contraceptive made of silicone.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tarla R. Patel whose telephone number is 571-272-3143. The examiner can normally be reached on M-F 6-3.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940.

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The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
PATRICIA BIANCO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700

6/25/07

TP